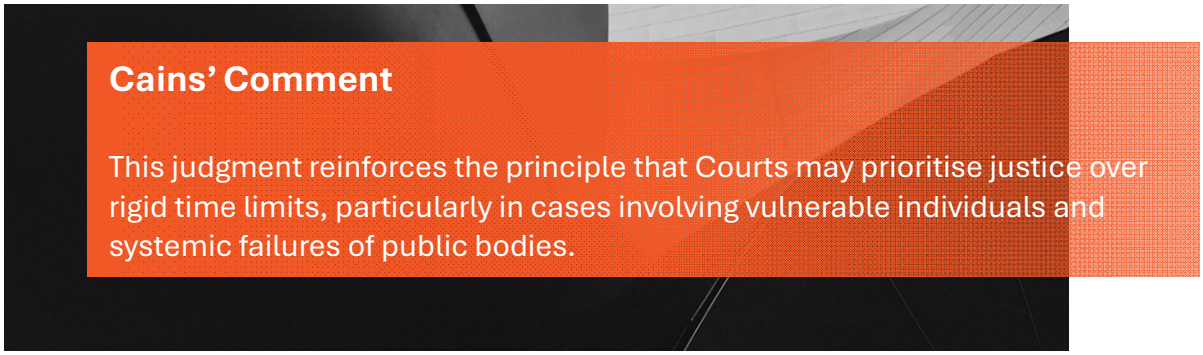
Cains' Judgment Journal: *Comment from Cains on Isle of Man Judgments*

Applications for Extensions of Time – Human Rights – Article 3 Claim



A v Manx Care & DHSC, Civil – Ordinary Procedure (June 2025, but published online in July 2025)

In a significant ruling from the Isle of Man High Court, Deemster[i] Needham granted an extension of time for a human rights claim brought by a Claimant alleging elder abuse. The case involved serious allegations against Manx Care and the Department of Health and Social Security ("DHSS"), including breaches of duty and violations of Article 3 of the European Convention on Human Rights.

The Claimant alleged that both Defendants had failed in their duty of care, resulting in him suffering physical and mental injury, in contravention of his right not to suffer torture or inhumane or degrading treatment. The claim was brought under section 6(1) of the Human Rights Act 2001. However, the Claimant acknowledged that the statutory one-

year time limit for bringing such claims had expired and applied for an extension under section 7(4) of the Act.

This provision allows the Court to extend the time limit if it considers it "equitable having regard to all the circumstances." The Defendants opposed the application, arguing that (a) there was a public interest in enforcing the 12-month limitation period for human rights claims, as late claims undermine legal certainty and impose unfair burdens on public bodies, (b) the Claimant has no reasonable explanation for the delay in bringing the claim, and (c) the human rights claim takes the case no further forward in terms of a potential remedy.

Key Issues

The court considered several factors in deciding whether to grant the extension:

- **Legal Precedents**

  - *Adenaike v Department of Home Affairs (Prison Operations)* [2018] MLR 155 confirmed that the court must have regard to all the circumstances, relevant factors and proportionality when deciding if they should extend the limitation period.

  - In *Solaria Energy UK Ltd v DBEIS* [2020] EWCA Civ 1625, Coulson LJ emphasised that "equitable" means fair to both sides, echoing Baroness Hale's reasoning in *A v Essex County Council* [2010] UKSC 33.

  - The Defendants cited *Bedford v Bedfordshire CC* [2013] EWHC 1717 QB, where Jay J emphasised that the one year limitation period was clearly introduced to warn against claims burdening public authorities years later.

- **Delay**
  The Deemster found that the delay had occurred due to the Claimant understandably pursuing more easily available methods of investigation, by complaining to the various bodies in order to investigate what had happened. The Deemster also stated that the Defendants had not acted properly in failing to give a substantive response to the Claimant in a timely manner.

- **Prejudice**

  The Deemster found that the delay had not prejudiced either party's ability to prepare for trial.

- **Public Interest**
  The Court noted that the chronic nature of the alleged failures, and the Defendants' actions, if proven, would raise a matter of significant public interest.

Decision

Deemster Needham concluded that it was right to allow the claim to proceed as it was clear that a human rights claim is a central part of the Claimant's case. He also noted that it would be inequitable for the Claimant not to be able to bring his claim as the delay was not the most lengthy nor will it require 'any greater effort overall' from the Defendants in defending the claim.

The full judgment can be found here: https://www.judgments.im/content/J3349.htm

Application for Permission to Appeal Case Management Decision

Cains' Comment

This judgment highlights the fact that appeals on procedural decisions will only succeed in exceptional circumstances.

David Jones & Selina Jones v DEFA, Staff of Government (Appeal Division, 8 July 2025)

This case arose from a dispute over planning permission for a sewage treatment works in Peel. The Applicants wanted a preliminary hearing to decide whether the Aarhus Convention, a treaty that promotes public access to environmental justice, applied in Isle of Man law. This was because that they were likely to have to discontinue their claim if the costs protections under the Convention were not applicable.

Acting Deemster Arrowsmith had refused to order such a hearing, and the Applicants sought permission to appeal. The Respondent opposed the application, arguing that the Aarhus Convention does not apply in Isle of Man law because it has not been incorporated into domestic legislation - a necessary step in a dualist legal system like the Isle of Man's.

Key Issues

The Judge of Appeal Cross reviewed the Acting Deemster's decision and found no fault in the way it was handled:

- The Acting Deemster had applied the 10-point checklist laid out by Neuberger J in *Steele v Steele* [2011] C.P. Rep 106, which guides judges on whether to hold preliminary hearings, without fault.

- The decision was a case management decision, and the Appeal Court will only interfere with such a decision in rare cases where the judge has misdirected their self, and/or taken into account irrelevant matters or failed to take into account relevant matters, or was just wrong. The Acting Deemster was entitled to reach this decision.

Judge of Appeal Cross also considered Rule 14.4D of the Rules of the High Court 2009 ("the Rules"), which governs appeals on case management decisions. Under Rule 14.4D(1)(a) and (b), the court must weigh whether the issue is significant enough to justify the cost and whether the appeal would disrupt the case timeline. In this instance, the appeal would cause delays and did not warrant the expense.

Finally, under Rule 14.3C(1), permission to appeal can only be granted if the appeal has a "real prospect of success." Judge Cross concluded that the proposed appeal has no real prospect of success.

Permission to appeal was refused. The court upheld the Acting Deemster's refusal to list a preliminary hearing to decide the issue of whether the Aarhus Convention is applicable in Isle of Man law.

The full judgment can be found at: https://www.judgments.im/content/J3357.htm

Permission to Appeal to the Judicial Committee of the Privy Council – Costs.

Cains' Comment

This judgment confirms that the Courts have no jurisdiction to entertain appeals against refusals of permission to appeal.

Paul Anthony Bell v HM Solicitor General, Staff of Government (Appeal Division), 8 July 2025

In this case, the Applicant, Mr Bell, sought permission to appeal to the Judicial Committee of the Privy Council (the "JCPC") after the Staff of Government Division (the "SGD") refused permission to appeal in May 2025.

Ultimately, the Applicant sought to appeal the First Deemster's dismissal of his claim in doleance - a form of judicial review. The appeal focused on a single legal issue: whether the High Court had misinterpreted section 21 of the Criminal Justice Act 1991.

The key question was whether the JCPC could deal with refusals of applications for permission to appeal.

- **Jurisdictional Limits**
  Section 19A(3) of the High Court Act 1991 clearly states that no appeal may be made against a decision to give or refuse permission. This provision is designed to ensure finality in litigation. Section 24(1), which deals with appeals against judgments or orders, does not apply to refusals of permission.

- **Arguments Presented**
  Mr Bell's skeleton argument did not raise any new legal points but repeated arguments already rejected by the SGD.

Permission to appeal was refused.

The judgment can be found here: https://www.judgments.im/content/J3359.htm

Liquidators' Remuneration

Cains' Comment

This case highlights the Court's role in supervising liquidators' fees when formal oversight mechanisms are absent to ensure fairness, whilst emphasising the ability of the liquidators and creditors to dispute these fees.

Global Steel Holdings Limited (in liquidation), Civil – Chancery Procedure, 11 July 2025

The joint liquidators of Global Steel Holdings Ltd applied to amend a previous court order that had capped their interim remuneration at 1.5% of realisations. They sought an increase to 5% citing the complexity of the liquidation.

The key issues in this case were:

- **Lack of Oversight**
  Deemster Corlett noted the absence of a Committee of Inspection, which typically reviews liquidators' fees. In its absence, the Court has oversight under sections 189 and 181(2) of the Companies Act 1931 and Rule 136 of the Companies (Winding-Up) Rules 1934. Rule 136 allows remuneration to be based on a percentage of realisations and distributions, and in the absence of a committee of inspection, by a scale of fees (although no official fee scale exists).

- **Legal Fees and Disbursements**
  The Court relied on previous judgments, *KSF* 2009 MLR 516 and *Broadsheet* 2022 MLR N-4, where liquidators used their judgment in managing legal costs. With estimated legal fees nearing £60 million, Deemster Corlett emphasised the importance of creditor scrutiny under section 267 of the Companies Act 1931.

- **Notice to Creditors**
  Although no notice was given before the application, the Court found this acceptable given the precedent in *KSF*, where notice was deemed unnecessary due to the large number of creditors. However, the Court

required the few admitted creditors to be notified of the order in order that they could, if they wished, challenge it under section 185(5) of the Companies Act 1931.

- **Remuneration Justification**
  The Court agreed that a 5% recovery rate was fair given the "highly complex" and "litigation heavy" nature of the liquidation and the litigation being ongoing in numerous jurisdictions. No percentage was claimed on distributions, and the Court noted that fees might have been higher had the case been heard in England and Wales.

Deemster Corlett approved the increase in interim remuneration from 1.5% to 5% of realisations. The liquidators were authorised to pay themselves and cover their disbursements from the company's assets.

The full judgment can be found at: https://www.judgments.im/content/J3363.htm

Permission to Appeal – Advocates' Fees

Cains' Comment

This case reinforces the treatment of government legal departments as in-house counsel for cost recovery purposes and clarifies the limited scope of fee regulations in such contexts.

Baccarat Limited & Morland Enterprises Limited v Cabinet Office, Staff of Government (Appeal Division), 30 July 2025

This judgment concerns a second appeal under Rule 14.4(2) of the Rules. The Applicants challenged a decision by the First Deemster, who had overturned a Costs Officer's ruling about how much the Cabinet Office could recover in legal fees paid to the Attorney General's Chambers ("AGC").

The Costs Officer had originally limited recovery to £110 per hour under the Advocates (Prescribed Fees) Regulations 2005, arguing that the Cabinet Office and AGC were separate legal entities. The First Deemster disagreed, treating AGC as "in-house" lawyers and allowing a higher rate of £300 per hour.

The key issues in this case:

- **Indemnity Principle**
  The Applicants argued that awarding costs to the Cabinet Office, who is not liable to pay any actual costs to the AGC, violated the indemnity principle, which prevents recovery of costs not actually incurred. However, they failed to provide legal authority to support this claim.

- **In-House Status of AGC**
  The First Deemster found that AGC operated as in-house counsel for the Cabinet Office, applying the *Eastwood* principles in *Gorry v Attorney General (No.4)* [2020 MLR 1].

- **Application of Fee Regulations**
  The Applicants claimed the 2005 Regulations capped recoverable fees at £110 per hour. The Court disagreed, stating that these regulations did not apply to in-house advocates.

The Judge of Appeal dismissed the application, stating that the First Deemster's decision was consistent with longstanding Isle of Man practice and correctly applied the law. The case was viewed as a routine costs matter between government departments that should be looked at pragmatically and practically. The Judge did not want to further complicate the position as this would be administratively unworkable, with associated costs and no practical benefit.

The full judgment can be found at: https://www.judgments.im/content/J3361.htm

Please note that this note does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact: Robert Colquitt or Tara Cubbon-Wood.

Reference

[i] The term used to refer to judges in the Isle of Man judiciary.

Imogen Starr, Trainee Advocate